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## OSHA UNDER REAGAN: THE FIRST ROUND

by Bill Dickens

The Supreme Court dealt the Reagan Administration's war on "excessive regulation" a setback this June when it denied OSHA's use of cost-benefit analysis to determine a health and safety standard. The decision came in the case of American Textile Manufacturers vs. Donovan (49 LW 4720-4736) concerning the OSHA cotton dust standard. Under the Carter administration OSHA had given the textile industry until 1984 to meet standards limiting workers' exposure to the small airborne particles of cotton which are known to cause byssinosis, or brown lung disease. The industry filed suit to prevent the standard from taking effect. When the Reagan Administration came to office, the suit had just reached the Supreme Court. Reagan's newly appointed OSHA administrators asked the Court not to rule on the case, as they intended to review the standard, presumably to subject it to cost-benefit analysis. In its decision the Supreme Court first rejected OSHA's request for a delay in judgment. Then the Court ruled that OSHA can consider costs and benefits only if they are relevant to show that a significant health risk exists, and that a proposed standard is feasible. According to the Court, OSHA's standards must be the safest feasible.

### Benzene vs. Cotton Dust

The Court's five to three decision came as a surprise to some. Last year in a five to four decision, the Supreme Court struck down OSHA's revised benzene standard (Industrial Union Department vs. American Petroleum Institute, 48 LW 5022-5053: July 1, 1980). The Court ruled OSHA had failed to show that current exposure levels posed a "significant risk." Some of the language used in the majority opinion suggested that the court felt a weighing of costs and benefits appropriate. In a concurring opinion, Justice Powell argued that the OSH Act required OSHA to determine that economic costs bear a "reasonable" relationship to the expected benefits.

Despite the Courts recent American Textile decision, the future of the cotton dust standard is far from settled. First, OSHA may now grant the industry further delays in meeting the standard. Second, OSHA has not cancelled the hearings on the cotton dust standard that it called when it asked the Court to delay judgment. What those hearings might cover is not clear. Some staff members at the Brown Lung Legal Center believe that OSHA, while sticking to the current exposure standard, may try to allow the textile industry to meet health and safety requirements by having workers wear protective masks, rather than by installing new equipment to reduce the amount of dust in the air. At this time no date has been set for the hearings.

### Preparing for Round Two

The Court's cotton dust decision may be only a temporary set-back in the Reagan Administration's war on government regulations in general, and OSHA regulations in particular. The battle continues on other fronts. First, the Administration has requested cuts in the number of OSHA inspectors, to further limit OSHA's ability to enforce its regulations.

Second, the Administration continues to relax and weaken general environmental standards, which also affect the nation's workplaces (especially the standards for use of toxic chemicals).

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Third, Senator Paul Laxalt (R-Nev) has introduced a "regulatory relief" bill (s.1080) to require that major federal regulations be subject to cost-benefit analysis. As currently written, the Laxalt bill would not override existing laws which prohibit cost-benefit analysis. As a result of the Court's cotton dust decision, however, the Administration will be under pressure from conservatives to introduce more restrictive legislation.

How future Court challenges will fare is unclear. Justice Stewart's retirement will most likely leave the situation unchanged, although Stewart has consistently voted against OSHA regulation. Of greater concern is that three of the Court's four firm defenders of workers' health and safety rights on the job are all in their 70s and likely to retire soon (Brennan, Marshall and Blackman). The President's appointments to fill their seats will be crucial to the future of worker health and safety.

#### Labor's Options in the 1980s

It is not likely that labor will have much impact in lobbying the present Administration to appoint Supreme Court justices who will defend workers' rights to health and safety on the job. Even the more broadly based environmental groups who are concerned about protecting the entire community face the same difficult odds.

At the legislative level, and in the administration and enforcement of present health and safety laws, there will be many important battles. Against the Reagan Administration, as it currently controls the Congress, the odds will still be heavily against labor. But at the state level, and especially in California, there is no good reason why labor cannot defend and even expand one of the best health and safety programs in the nation. Especially in the major area of toxic chemical and waste control, California must continue to set an important example for the entire nation. Winning the coming battles at this level may require more effective cooperation between labor and environmental groups.

Perhaps of greater importance still, organized labor can increase its reliance on collective bargaining. Many unions have fought out the health and safety issues in contract negotiations for many long years, and have won effective protection in thousands of different clauses and procedures in their agreements. These gains may now become harder to hold, but it may also be impossible for the Reagan Administration to regulate or legislate them out of existence.

Some unions have still not given high enough priority to collective bargaining for health and safety on the job. But workers everywhere are now informed and concerned about the expanding range of health hazards confronting them, both in the community and in the workplace. The examples of successful protection of workers through collective bargaining negotiations are available for all unions to follow. As long as workers have the right to organize and bargain collectively, the goal should be to make the workplace safer than the community.

- Bill Dickens

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